

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**ANGELA FONTANA and ALFRED
HOFSTADTER,**

Plaintiffs,

v.

BANK OF AMERICA,

Defendant.

Docket No.: 14-1069-WJM-MF

OPINION

WILLIAM J. MARTINI, U.S.D.J.:

Defendant Bank of America moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss for failure to state a claim. The court will dismiss the Complaint *sua sponte* for lack of subject matter jurisdiction.

I. Background

Pro se Plaintiffs filed a Complaint making three allegations: (1) Bank of America denied them a refinance mortgage and failed to state a valid reason for denial; (2) Bank of America sent a letter to Plaintiffs falsely stating that they missed a loan payment and owed late fees; (3) Bank of America sent a bill to Plaintiffs charging interest on “something with a 0% interest and a fee I didn’t owe.” With regards to the first allegation, Plaintiff alleges that it is a violation of the Home Mortgage Disclosure Act (“HMDA”) because the bank is not free to deny a refinance mortgage for any reason.

II. Subject Matter Jurisdiction

The Court has a duty to ensure that it has jurisdiction over the case before it, and may dismiss a claim, *sua sponte*, for lack of jurisdiction. *Nesbitt v. Gears Unlimited, Inc.*, 347 F.3d 72, 76-77 (3d Cir.2003). The burden of proving subject

matter jurisdiction is on the plaintiff. *CNA v. United States*, 535 F.3d 132, 139 (3d Cir. 2008).

III. Discussion

The Home Mortgage Disclosure Act does not contain a private cause of action, enforcement being left to the discretion of the Bureau of Consumer Financial Protection. 12 U.S.C. § 2804(b). *See also Swanson v. Citi*, 706 F. Supp. 2d 854, 862 (N.D. Ill. 2009); *McGinnis v. GMAC Mortgage Corp.*, 2:10-CV-00301-TC, 2010 WL 3418204 (D. Utah Aug. 27, 2010) (“[T]he HMDA does not provide for a private cause of action.”). The court must dismiss the case because Plaintiffs have no cause of action under the Home Mortgage Disclosure Act and have stated no other basis for subject matter jurisdiction.

IV. Conclusion

For the foregoing reasons, Defendant’s motion to dismiss is hereby granted without prejudice.

/s/ William J. Martini

WILLIAM J. MARTINI, U.S.D.J.

Date: May 20, 2014